

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING PROPOSALS AND
COMMENTS ON THE DEVELOPMENT OF A LONG-TERM POLICY FOR
EXPIRING QUALIFYING FACILITIES (QF) CONTRACTS**

Summary

This ruling initiates the Commission's consideration of a long-term policy for expiring QF contracts. Pursuant to the Commission order that instituted this rulemaking (OIR), proposals for such a policy may be filed and are due on November 10, 2004. Proposals may also address policy for new QFs. Comments on those proposals are due November 24, 2004.

Background

Consistent with the delineation of "next steps" toward the resolution of procurement issues outlined by the Commission in Decision (D.) 04-01-050, Section VIII, the OIR identified six distinct issues that will be considered in this proceeding. Two of these issues – review and adoption of the utilities' long-term procurement plans and resource adequacy – were designated as "critical path" issues in the June 4, 2004 *Assigned Commissioner's Ruling and Scoping Memo* (Scoping Memo). A third issue to be considered in this proceeding is the development of a long-term policy for handling expiring QF contracts. (OIR, pp. 4, 18-19.) The Assigned Commissioner provided that the timetable for

resolution of this and other non-critical path issues would be determined at a later date. (Scoping Memo, p. 7.)

Discussion

The current Commission policy for expiring QF contracts was adopted in D.03-12-062 and modified and extended in D.04-01-050. This policy is interim in nature and addresses only those QFs whose contracts have expired or are set to expire before January 1, 2006. (D.04-01-050, p. 157.) If the Commission does not explicitly adopt a policy that addresses QF contracts that expire on and after that date, it will have left the status of expiring QFs in limbo at a time when the number of expiring contracts becomes increasingly significant. Even though long-term policy for handling expiring QF contracts was not initially designated a critical path issue in this proceeding, consideration of such a policy should begin now so that the Commission is in a position to resolve this issue well before the end of 2005.

The OIR provided that the Commission “will begin this determination by inviting parties to file their proposals for such a long-term policy, and then taking written comments on these proposals.” (OIR, p. 19.) This ruling will give effect to this Commission directive by providing for the filing of such proposals and comments. The schedule is designed to follow the filing of reply briefs in the long-term procurement plan portion of this proceeding.

As directed in the OIR, respondents and other commenting parties shall specify how their proposals meet the test established in D.04-01-050 of assuring fairness to the QF community as well as investor-owned utilities and their ratepayers. (*Id.*) Any party making a proposal for QF policy pursuant to this ruling shall include a proposed procedure and a schedule for the Commission’s consideration of the proposal. Any party who believes that the issues warrant

evidentiary hearings shall specify in its comments the issues requiring hearing as well as why hearings are required.¹ (*Id.*)

In its prehearing conference statement, CCC took the position that in connection with designing a policy for expiring QF contracts, the Commission should also address long-term procurement policy for new QFs. These policy questions are closely related, and this proposal will therefore be granted. Parties making proposals for long-term policy for expiring QF contracts may also include proposals for Commission policy for new QFs.

In its prehearing conference statement, Southern California Edison Company (SCE) took the position that the issue of whether and on what terms existing QF contracts should be extended cannot properly be addressed without first addressing and resolving the issue of avoided cost pricing.² SCE recommends that two phases of R.04-04-025 be established.³ The first phase would address Short Run Avoided Cost pricing methodology and the second

¹ In its prehearing conference statement, the California Cogeneration Council (CCC) took the position that the “QF policy issues to be addressed in this proceeding should not necessitate evidentiary hearings. The need to ensure long-term procurement from QFs is a matter of law and policy, and the CCC does not anticipate that proposals will raise factual issues that necessitate hearings. That being said, the need for hearings cannot be ruled out until proposals are actually filed and parties are able to assess whether disputed factual questions exist.” (CCC prehearing conference statement, p. 4.)

² In applications for rehearing of D.03-12-062 and D.04-01-050, SCE took the position that the Commission cannot lawfully implement any state PURPA policy without first ensuring that such a policy does not require a utility to purchase power at a rate that exceeds its avoided cost. Those applications were denied in D.04-07-037, and SCE has sought judicial review of this question in Southern California Edison Company v. Public Utilities Commission et al., 2d Dist, Division 7, No. B177138.

³ R.04-04-025 is the Commission’s rulemaking to promote consistency in the methodology and input assumptions in applications of short-run avoided costs.

phase would consider procurement from existing and new QF resources within the broader context of utility resource portfolio planning and management. At the prehearing conference, Pacific Gas and Electric Company and San Diego Gas & Electric Company indicated support for this approach and CCC opposed it.

R.04-04-025 will be litigated during 2005, and establishing another phase of that proceeding to consider policy for expiring QFs could cause unacceptable delay in the establishment of such a policy. SCE's procedural proposal will not be approved at this time. I will continue to work with the Administrative Law Judge assigned to R.04-04-025 with the objective of ensuring that the development of Commission policy for QFs is coordinated across proceedings.

While this ruling provides for the filing of proposals and comments, the final schedule for adopting a long-term policy for expiring QF contracts will be determined after review of the comments and a determination of whether evidentiary hearings are required. I anticipate establishing a schedule providing for a Commission decision in the first quarter of 2005 if hearings are not required. If hearings are required, I anticipate a Commission decision in the second quarter of 2005.

IT IS RULED that:

1. Proposals for a long-term policy for expiring QF contracts and new QF contracts may be filed and are due November 10, 2004. Comments on those proposals may be filed and are due November 24, 2004.

2. Any party who believes that the Commission must hold evidentiary hearings on these proposals and the underlying issues shall so state in its comments, and specify the issues requiring hearing as well as why hearings are required. The need for evidentiary hearings will be determined after review of the comments.

Dated September 30, 2004, at San Francisco, California.

/s/ Mark S. Wetzell

Mark S. Wetzell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Proposals and Comments on the Development of a Long-Term Policy for Expiring Qualifying Facilities (QF) Contracts on all parties of record in this proceeding or their attorneys of record.

Dated September 30, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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